

limited to, professional, technical, consultant, legal, security systems, advertising, building cleaning and maintenance, computer programming, or managerial.

(f) Count 100 percent of the cost of goods obtained from an ACDBE manufacturer. For purposes of this part, the term manufacturer has the same meaning as in part 26, § 26.55(e)(1)(ii).

(g) Count 100 percent of the cost of goods purchased or leased from a ACDBE regular dealer. For purposes of this part, the term “regular dealer” has the same meaning as in part 26, § 26.55(e)(2)(ii).

(h) Count credit toward ACDBE goals for goods purchased from an ACDBE which is neither a manufacturer nor a regular dealer as follows:

(1) Count the entire amount of fees or commissions charged for assistance in the procurement of the goods, provided that this amount is reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the goods themselves.

(2) Count the entire amount of fees or transportation charges for the delivery of goods required for a concession, provided that this amount is reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of goods themselves.

(i) If a firm has not been certified as an ACDBE in accordance with the standards in this part, do not count the firm’s participation toward ACDBE goals.

(j) Do not count the work performed or gross receipts earned by a firm after its eligibility has been removed toward ACDBE goals. However, if an ACDBE firm certified on April 21, 2005 is decertified because one or more of its disadvantaged owners do not meet the personal net worth criterion or the firm exceeds business size standards of this part during the performance of a contract or other agreement, the firm’s participation may continue to be counted toward ACDBE goals for the remainder of the term of the contract or other agreement (but not extensions or renewals of such contracts or agreements).

(k) Do not count costs incurred in connection with the renovation, repair, or construction of a concession facility (sometimes referred to as the “build-out”).

(l) Do not count the ACDBE participation of car rental companies toward your ACDBE achievements toward this goal.

#### **§ 23.57 What happens if a recipient falls short of meeting its overall goals?**

(a) You cannot be penalized, or treated by the Department as being in non-compliance with this part, simply because your ACDBE participation falls short of your overall goals. You can be penalized or treated as being in non-compliance only if you have failed to administer your ACDBE program in good faith.

(b) If your ACDBE participation falls short of your overall goals, FAA may require you to submit to the FAA a statement of the reasons why you were unable to meet it and the steps you are taking to meet your overall goals or to adjust them based on changed circumstances.

(c) In response to your submission, FAA may require you to implement appropriate remedial measures.

#### **§ 23.59 What is the role of the statutory 10 percent goal in the ACDBE program?**

(a) The statute authorizing the ACDBE program provides that, except to the extent the Secretary determines otherwise, not less than 10 percent of concession businesses are to be ACDBEs.

(b) This 10 percent goal is an aspirational goal at the national level, which the Department uses as a tool in evaluating and monitoring DBEs’ opportunities to participate in airport concessions.

(c) The national 10 percent aspirational goal does not authorize or require recipients to set overall or concession-specific goals at the 10 percent level, or any other particular level, or to take any special administrative steps if their goals are above or below 10 percent.